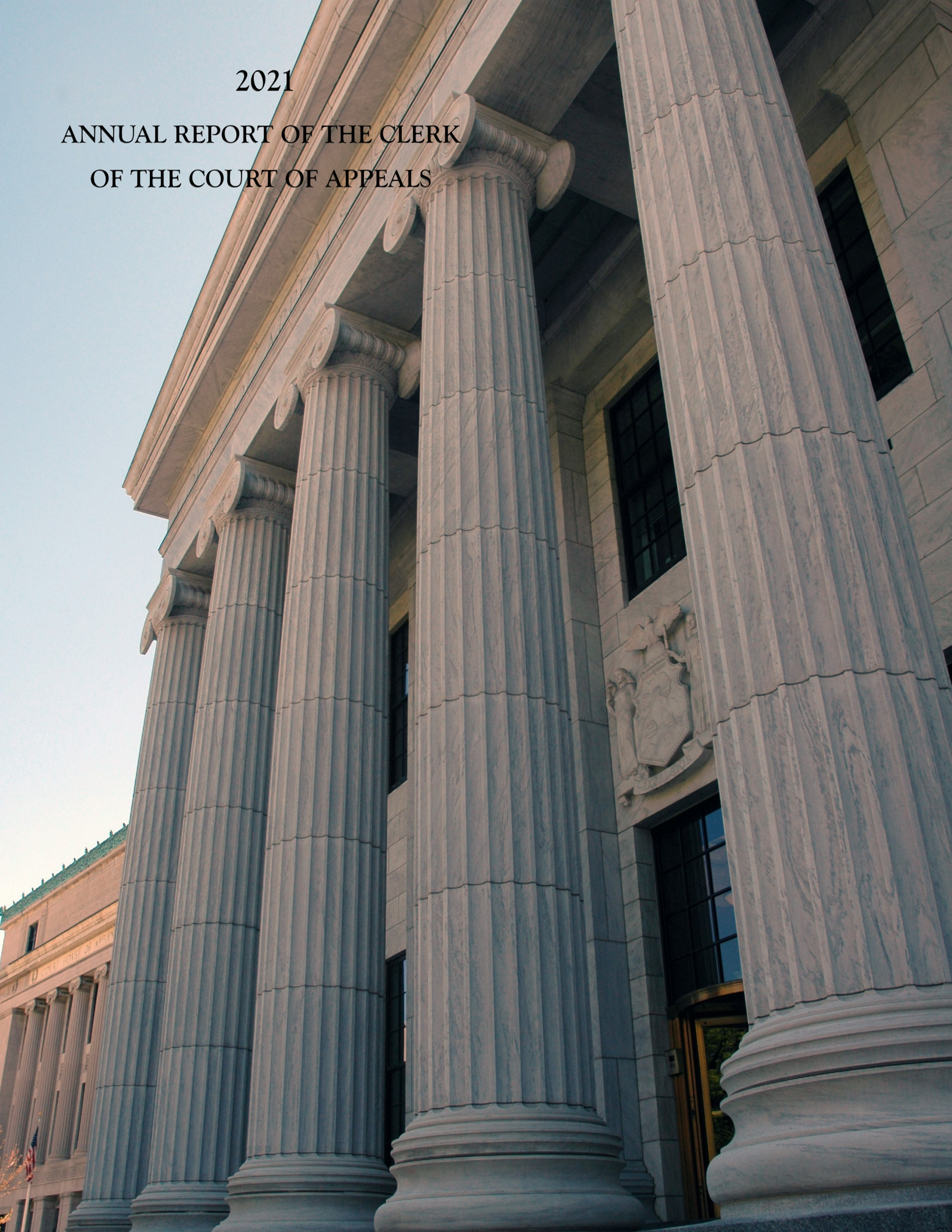


2021

ANNUAL REPORT OF THE CLERK  
OF THE COURT OF APPEALS



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2021

Annual Report of the Clerk of the Court of Appeals

John P. Asiello

Clerk of the Court

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**Honorable  
Janet DiFiore  
Foreword  
March 2022**

As reflected in this Annual Report, 2021 was a busy and eventful year for the New York Court of Appeals.

On March 31, 2021, our Court family was saddened by the untimely death of Paul G. Feinman, an extraordinary jurist and beloved colleague who is deeply missed by all of us. In 2021, the Court also lost two exceptional Judges to retirement: Judge Leslie E. Stein, on June 4th, and Eugene M. Fahey, on December 31st.

With institutional change comes renewal, and in 2021 the Court was graced with two wonderful new Judges: Madeline Singas and Anthony Cannataro, both of whom were confirmed to the Court on June 8th. And their arrival was followed by the welcome news, on November 24, 2021, of Judge Shirley Troutman's nomination to our Court by Governor Kathy Hochul.

No summary of the Court's work would be complete without mentioning the public health and operational challenges presented by the ongoing COVID-19 pandemic. The Court safely navigated these challenges through the creative use of technology and disciplined enforcement of health and safety protocols. In-person oral arguments were held in our historic Richardson Courtroom, with Judges and counsel observing protocols that included face coverings and six-foot physical distancing.

One constant in a year marked by change and transition was the Court's unfaltering

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commitment to promptly calendar, hear and adjudicate our docket of appeals and motions. In 2021, the average time from oral argument to disposition of a normal course appeal improved to 31 days.

It is an honor and a privilege to serve with colleagues who are dedicated to maintaining our Court's proud tradition of operational and decisional excellence. I extend my thanks and appreciation to each one of them for their commitment to our institutional mission of developing a strong, coherent and predictable body of law to guide the affairs of the people, economy and government of New York State.

Finally, on behalf of my colleagues, I want to express my admiration and gratitude to the Court's exceptional legal and administrative staff, led so ably by John Asiello, the Clerk of the Court. Their hard work, skill and professionalism enable us as Judges to carry out our work in a special atmosphere of efficiency, civility and excellence. We thank them for their service to the Court of Appeals and the people of our state.

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2021  
Annual Report of the Clerk of the Court to the Judges of  
the Court of Appeals of the State of New York

Introduction

As observed by Chief Judge DiFiore in her foreword, in 2021, the Court continued to address the difficult circumstances presented by the COVID-19 pandemic, working toward the goal of maximizing in-person operations without compromising the health and safety of the public, members of the bar, Judges and staff. In-person operations were increased incrementally throughout the year as improving circumstances permitted, and evolving public health guidelines and protocols of the Unified Court System allowed.

The year began with Albany staff working from home or in-person on a rotation so that less than half the staff were present in Court of Appeals Hall at any given time. Density in the Courthouse was further reduced by holding oral argument in January and February by videoconference, with Judges and their staff remaining in local chambers. Priority was given to returning as soon as feasible to holding oral argument and conferences of the Court in-person. Starting with the March session, the Judges met in Albany and heard argument in the courtroom. Masking, social distancing and other health protocols were maintained; limited seating was made available for the public to attend argument. Those practices continued for the remainder of the year. In-person staffing was increased to some extent in March, but remained reduced with only limited Judges' personal staff traveling to Albany and some Albany staff continuing to work from home. For the August-September session, restrictions were further relaxed by returning to full in-person staffing and restoring normal operations at Court of Appeals Hall to that extent.

The Court did not amend its Rules of Practice in 2021. The companion digital filing system for motions, *sua sponte* jurisdictional reviews and criminal leave applications, adopted by significant amendments to the Rules in 2020, was fully implemented in 2021 and found to operate well. During 2021, the Court continued to address issues relating to how the pandemic disrupted the bar examination and legal education.

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Principal Stenographer Andrea Ignazio, who provided administrative assistance in the Court's Public Information, Motions, and Appeals Departments, retired in 2021, after almost 20 years' service with the Court. The Court filled a few vacancies in Albany Staff positions during 2021, adding Principal Stenographers Michele Taylor, Jessica Whiting and Taylor Flowers to provide administrative assistance for the Motions and Appeals Departments of the Clerk's Office and for the Central Legal Research Staff.

I would like to take this opportunity to again thank the Court's non-judicial personnel for their flexibility and dedication throughout another challenging year.

The format of this year's Annual Report, divided into five parts, follows the format of the 2020 report. The first section is a narrative overview of matters filed with and decided by the Court during the year. The second part describes various functions of the Clerk's Office, and summarizes administrative accomplishments in 2021. The third section highlights selected decisions of 2021. The fourth part covers some of the Court's 2021 notable events. The fifth part consists of appendices with detailed statistics and other information.

## The Work of the Court

The Court of Appeals is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a 14-year term. The primary role of the Court of Appeals is to unify, clarify, and pronounce the law of New York State.

The State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right; thus, the Court hears most appeals by its own permission, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance or involve issues on which the holdings of the lower courts of the state conflict. The correction of error by courts below remains a legitimate, if less frequent, basis for this Court's decision to grant review. The Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

In addition to appellate jurisdiction, the State Constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or another state's court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations by the State Commission on Judicial Conduct.

The Judges of the Court collectively decide all appeals, certified questions, proceedings to review determinations of the State Commission on Judicial Conduct, and motions. Individually, the Judges decide applications for leave to appeal in criminal cases and emergency show cause orders. For most appeals, the Judges receive written and oral argument and set forth the reasons for their decisions in written opinions and memoranda.

The Court sits in Albany throughout the year. During these sessions held in Albany, oral argument is heard in the afternoon and the Court meets in conference in the mornings to discuss the argued appeals, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. In 2021, in addition to hearing oral argument in Albany, the Court heard oral argument by videoconference.

In 2021, the Court and its Judges disposed of 2,727 matters, including 81 appeals,\* 988 motions, and 1,658 criminal leave applications. A detailed analysis of the Court's work follows.

\* This number includes final determinations of Rule 500.27 certified questions.

## **Appeals Management**

### **Screening Procedures**

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. After filing a notice of appeal or receiving an order granting leave to appeal to this Court, an appellant must file a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all filed preliminary appeal statements for issues related to subject matter jurisdiction. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issues identified. After the parties respond to the Clerk's inquiry, the Clerk may direct the parties to proceed to argue the merits of the appeal or refer the matter to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court. The Rule 500.10 screening process is valuable to the Court, the bar, and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

In 2021, 63 appeals were subject to Rule 500.10 inquiries. Of those, 52 appeals were dismissed *sua sponte* (SSD) or transferred to the Appellate Division. Five inquiries were pending at year's end.

### **Normal Course Appeals**

The Court determines most appeals "in the normal course," meaning after full briefing and oral argument by the parties. In 2021, 56 appeals were decided in the normal course. In these cases, copies of the briefs and record material are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. Each appeal is assigned by random draw to one member of the Court for reporting to the full Court.

Following oral argument of an appeal, the appeal is conferenced by the full Court. In conference, the Judges are seated clockwise in seniority order around the conference table. The reporting Judge speaks first on the appeal, followed by the other Judges in reverse seniority order (the most junior Judge speaks after the reporting Judge). Draft writings are circulated to all Judges for review and consideration. After further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next scheduled session of the Court.

### **Alternative Track Appeals**

The Court also employs the alternative track of *sua sponte* merits (SSM) review of appeals pursuant to Rule 500.11. Through this SSM procedure, the Court decides appeals on written submissions without oral argument, saving the litigants and the Court the time and expense associated with the filing of bound briefs and oral argument. As with normal course appeals, the parties' submissions are available through the Court's Public Access and Search System (Court-PASS) and Court Rules permit amicus curiae participation.

Parties may request SSM review. A case may be placed on SSM review if, for example, it involves narrow issues of law or issues decided by a recent appeal. As with normal course appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes and are conferenced and determined by the entire Court.

Of the 187 appeals filed in 2021, 33 (17.6%) were initially selected to receive SSM consideration, a slight decrease from the percentage so selected in 2020 (19.8%). Eighteen (18) were civil matters and 15 were criminal matters. Seven (7) of the appeals initially selected to receive SSM consideration in 2021 were directed to full briefing and oral argument. Of the 81 appeals decided in 2021 on the normal course or on the SSM procedure, 25 (31%) were decided upon SSM review (32% were so decided in 2020). Eight (8) were civil matters and 17 were criminal matters. No appeals selected for SSM treatment were withdrawn. Seventeen (17) matters remained pending on SSM review at the end of 2021 (8 civil and 9 criminal).

### **Promptness in Deciding Appeals**

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2021, the average time from argument to disposition of a normal course appeal was 31 days; for all appeals, the average time from argument or submission to disposition was 22 days.

The average period from filing a notice of appeal or an order granting leave to appeal to oral argument was approximately 17 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately 11 months.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release of a decision in a normal course appeal (including SSM appeals tracked to normal course) was 18 months. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16 (a) for failure to perfect, the average was 5 months.

## **The Court's 2021 Docket**

### **Filings**

One hundred eighty-seven (187) notices of appeal and orders granting leave to appeal were filed in 2021 (176 were filed in 2020). One hundred fifty-one (151) filings were civil matters (compared to 142 in 2020), and 36 were criminal matters (compared to 34 in 2020). The Appellate Division Departments issued 24 of the orders granting leave to appeal filed in 2021 (15 were civil, 9 were criminal).

Motion filings increased in 2021. During the year, 1,030 motions were submitted to the Court, compared to the 954 submitted in 2020. Criminal leave application filings decreased in 2021. In 2021, 1,659 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 1,729 assigned in 2020. On average, each Judge was assigned 237 such applications during the year.

### **Dispositions**

#### **Appeals and Writings**

In 2021, the Court decided 81 appeals (37 civil and 44 criminal, compared to 54 civil and 42 criminal in 2020). Forty-five (45) of the 81 appeals were decided by signed opinions, 25 by memoranda, 2 by per curiam opinions, and 9 by decision list entries. Thirty-seven (37) dissenting opinions and 24 concurring opinions were issued.

### **Motions**

The Court decided 988 motions in 2021, a decrease from the 1,070 decided in 2020. Of the 801 motions for leave to appeal decided in 2021, 4.1% were granted, 73.3% were denied, 22.1% were dismissed, and .5% were withdrawn. Thirty-three (33) motions for leave to appeal were granted in 2021. The Court's leave grants covered a wide range of subjects and reflect the Court's commitment to grant leave in cases presenting issues that are of great public importance, are novel, or present a split in authority among the Appellate Division Departments.

The average period of time from return date to disposition for civil motions for leave to appeal was 101 days, while the average period of time from return date to disposition for all motions was 90 days.

### **CPL 460.20 Applications**

Individual Judges of the Court granted 27 of the 1,658 applications for leave to appeal in criminal cases decided in 2021. Ninety-eight (98) applications were dismissed for lack of jurisdiction and 7 were withdrawn. Three (3) of the 52 applications filed by the People were granted. Of the 118 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, none was granted. Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court. The period during which such applications are pending includes several weeks for the parties to prepare and file their written arguments. In 2021, on average, 59 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

### **Review of Determinations of the State Commission on Judicial Conduct**

The Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this State with a crime punishable as a felony (*see* Judiciary Law § 44 [8]). No judges were suspended by the Court in 2021.

### **Certifications Pursuant to Rule 500.27**

Rule 500.27 provides that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state, that determinative questions of New York law are involved in a case pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. The Court first decides whether the certification should be accepted and, if the Court accepts a certified question, the matter is treated similarly to an appeal. In 2021, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 60 days. The average period from acceptance of a certification to disposition was 13 months.

The Court accepted one certified question and declined to accept one certified question in 2021. The Court answered five certified questions in 2021 (four were accepted in 2020 and one was accepted in 2021). Two certified questions were withdrawn. At the end of 2021, two certified questions remained pending.

## **Petitions for Waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law**

In 2021, the Court decided 448 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a significant increase from the 309 petitions decided in 2020. Petitions typically are decided six to eight weeks after submission.

## **Court Rules**

In response to the continuing global health pandemic, the Court temporarily waived certain bar exam eligibility requirements for J.D. and LL.M. candidates and permitted the New York State Board of Law Examiners to administer a remote Uniform Bar Examination in February and July 2021.

## **Administrative Functions and Accomplishments**

### **Court of Appeals Hall**

Court of Appeals Hall at 20 Eagle Street has been the Court's home for over 100 years. The classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery, and the State Supreme Court. On January 8, 1917, the Court of Appeals moved from the State Capitol into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the courtroom and the Court's library and conference room. Major renovations in 1958-1959 and 2002-2004 – the latter including two additions to the building faithful to its Greek Revival design – produced the architectural treasure the Court inhabits today.

The Building Manager oversees all services and operations performed by the Court's maintenance staff and by outside contractors at Court of Appeals Hall.

### **Clerk's Office**

Clerk's Office staff respond – in person, by telephone, and in writing – to inquiries and requests for information from attorneys, litigants, the public, academics, and court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in, and consult on, programs and publications designed to educate the bar about Court of Appeals practice.

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Criminal Leave Applications Clerk, several secretaries, court attendants, and clerical aides perform the many and varied tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers; filing and distributing to recipients all materials received, including digital filings; scheduling and noticing oral arguments; compiling and reporting statistical information about the Court's work; assisting the Court during conference; and preparing the Court's decisions for release to the public. The Court's document reproduction unit handles most of the Court's internal document reproduction needs, as well as reproducing decision lists and slip opinions for release to the public. Security attendants screen all mail. Court attendants deliver mail in-house and maintain the Court's records room, tracking and distributing all briefs, records, exhibits, and original court files. During the Court's sessions, the court attendants also assist the Judges in the courtroom and in conference.

## **Information Technology**

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Chief Management Analyst, assisted by a LAN Administrator, a PC Analyst, and a Senior Associate Computer Applications Programmer. These operations include all software and hardware used by the Court and a statewide network connecting the remote Judges' chambers with Court of Appeals Hall. The Department also maintains a hands-on help desk to assist employees with hardware and software issues as they arise. Training on software and hardware is provided as needed, either within the Court or via outside agencies. Maintenance calls to the help desk were estimated at 4,400 for the year.

The Department is also responsible for the upkeep of three websites: an intranet website; the Court's main internet site, located at <http://www.nycourts.gov/ctapps>; and the Court-PASS website, located at <http://www.nycourts.gov/ctapps/courtpass>. Over 1,157,445 visits were recorded to the main internet site in 2021, averaging 3,171 visits per day. The Court-PASS and Companion Filing Upload Portal sites recorded 185,358 visits in 2021.

## **Court of Appeals Website**

The Court's comprehensive website posts information about the Court, its Judges, and its history; summaries of pending cases and news items; and recent Court of Appeals decisions. The latest decisions are posted at the time of their official release. During Court sessions, the website offers live webcasts of all oral arguments. Since January 2010, these webcasts have been preserved in a permanent archive on the website to allow users to view the arguments at their convenience. Since September 2012, transcripts of oral arguments are also available on the website and are archived there as well. The website provides helpful information about the Court's practice – including its Rules, civil and criminal jurisdictional outlines, court forms, session calendars, and undecided lists of argued appeals and civil motions – and provides links to other judiciary-related websites.

## **Court of Appeals Public Access and Search System (Court-PASS)**

The Court of Appeals Public Access and Search System (Court-PASS) is the method for submitting records and briefs in digital format on appeals to the Court of Appeals, and offers universal online access to publicly available documents through a searchable database. Anyone may search or browse the Court-PASS database free of charge and may view or download briefs and records in civil and criminal appeals. The docket function of Court-PASS contains a snapshot of frequently requested information for all undecided appeals, including the due dates set for filings on appeals, scheduled dates of oral argument, and attorney contact information.

## **Companion Filing Upload Portal for Motions, Criminal Leave Applications and Rule 500.10 Responses**

The Companion Filing Upload Portal for Motions, Criminal Leave Applications and Rule 500.10 Responses (the Portal) is used to upload companion digital submissions of motions, criminal leave applications and Rule 500.10 Jurisdictional Responses. Instructions for uploading companion digital submissions are provided in an instructional letter following the filing of a motion, criminal leave application or appeal subject to Rule 500.10 review.

## **Public Information Office**

The Public Information Office distributes the Court's decisions to the media upon release and answers inquiries from reporters about the work of the Court. For each session, the office prepares descriptive summaries of cases scheduled to be argued before the Court, which are posted on the Court's website. The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public – from schoolchildren to members of the bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic courtroom for visitors.

## **Office for Professional Matters**

Special Projects Counsel manages the Office for Professional Matters. An administrative assistant provides administrative, research, and drafting support for the office. Special Projects Counsel drafts reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions seeking waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, (3) proposed rule changes relating to admission and licensing rules, and (4) other matters regarding the admission and regulation of attorneys in New York. The office responds to written and telephone inquiries related to the Court's admission rules, reviews submissions from U.S. law schools seeking approval of courses as satisfying the requirements of the Court's rules, and prepares certificates of admission upon request.

## **Central Legal Research Staff**

Under the supervision of the Judges and the Clerk and Deputy Clerk of the Court, the Central Legal Research Staff prepares reports on civil motions and selected appeals for the full Court's review and deliberation. From December 2020 through December 2021, Central Staff completed 697 motion reports and 12 SSM reports. Attorneys usually, but not invariably, join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed during part or all of 2021 were graduates of Albany, Cornell, Northeastern University, Syracuse University, University at Buffalo, and Vermont law schools.

## **Library**

The Principal Law Librarian and Senior Law Librarian provide legal and general research and reference services to the Judges of the Court, their law clerks, and the Clerk's Office staff.

During 2021, the Library adapted procedures to continue to serve the Court throughout periods of virtual operations. The librarians regularly assess library subscriptions in an effort to provide access to information resources efficiently and economically. Work is ongoing to expand in-house databases that provide full-text access to the Court's internal reports, bill jackets, and other research materials.

## **Continuing Legal Education Committee**

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals, New York State Law Reporting Bureau, and New York State Board of Law Examiners attorneys. The Committee meets on an as-needed basis and issues credit for suitable programs offered by the Court or its auxiliary agencies.

In 2021, the Committee provided 4 programs totaling 7 credit hours. Attorneys also were provided with information on CLE programs offered by the Appellate Division, Third Department, the New York State Judicial Institute, the New York State-Federal Judicial Council and the Historical Society of the New York Courts. These programs accounted for 27 additional credit hours of live and teleconference programming.

## **Security Services**

The Court Security Unit provides for the safety, security, and protection of judicial staff, court personnel, and the public who visit the Court. The Chief Security Attendant, with the assistance of the Deputy Chief of Security, supervises the Court Security Unit, which consists of Senior Security Attendants and Court Building Guards. The attendants are sworn New York State Court Officers who have peace officer status.

The Security Unit conducts a variety of security functions, including magnetometer/security screening for the visiting public. Other functions include judicial escorts, security patrols, video monitoring, and providing a security presence in the courtroom when Court is in session.

## **Management and Operations**

The Director of Court of Appeals Management and Operations, aided by two Court Analysts, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, employee time and leave management, payroll preparation, voucher processing, benefit program administration and annual budget request development.

## **Budget and Finance**

The Director of Court of Appeals Management and Operations is responsible for initial preparation, administration, implementation and monitoring of the Court's annual budget. The proposed annual budget is reviewed by the Clerk and Deputy Clerk before submission to the Judges of the Court for their approval.

## **Expenditures**

The work of the Court and the New York State Law Reporting Bureau was performed within the 2021-22 fiscal year budget appropriation of \$1.3 million for non-personal services costs, including in-house maintenance of Court of Appeals Hall.

## **Budget Requests**

The total request for fiscal year 2022-23 for the Court and Law Reporting Bureau is \$1.5 million for non-personal services.

The budget request for fiscal year 2022-23 illustrates the Court's diligent attempt to perform its functions and those of the New York State Law Reporting Bureau economically and efficiently. The Court will continue to maximize opportunities for savings.

## **Revenues**

In calendar year 2021, the Court reported filing fees for civil appeals totaling \$20,205. Also, the Court reported filing fees for motions totaling \$22,410. The funds were reported to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through miscellaneous collections (\$856.19). For calendar year 2021, revenue collections totaled \$43,471.19.

## ACKNOWLEDGMENT

Although submitted to the Court under the name of the Clerk, the Annual Report is a joint effort of Court staff who provide numerical data, narrative content, graphics, editing, and proofreading necessary for its production. In conveying my appreciation to each member of the staff who contributed, I thank in particular Deputy Clerk Heather Davis, who, in addition to discharging her numerous other duties, compiled and edited the report, and mention also Ann Byer, Cynthia Byrne, Zainab Chaudhry, Lisa Drury, Margery Corbin Eddy, Hope Engel, Antonio Galvao, Bryan Lawrence, Rachael MacVean, Marissa Mason, Edward Ohanian, Amanda Ross-Carroll, Stephen Sherwin, and Margaret Wood.

The Annual Report is but one example of the extraordinary service the staff provides to the Judges of the Court, the bar, and the public throughout the year. The staff is to be commended for recognizing that such public service is both a privilege and a responsibility. A complete list of the Court's nonjudicial staff appears in Appendix 2.

Finally, I acknowledge the individuals in the Office of Court Administration and throughout the Unified Court System who continue to provide expert assistance to the Judges and staff of the Court of Appeals.

## Year in Review: Decisions

Below is a summary of significant 2021 decisions, reflecting the range of constitutional, statutory, regulatory and common law issues decided by the Court each year.

### ADMINISTRATIVE LAW

*Matter of Juarez v New York State Off. of Victim Servs.* (36 NY3d 485)

The Court considered the validity of regulations of the Office of Victim Services (OVS) that limit attorneys' fee awards for crime victim claimants to the costs incurred on applications for administrative reconsideration or appeal and on judicial review (9 NYCRR 525.3, 525.9). The question presented was whether these regulations, which effectively barred reimbursement of attorneys' fees incurred during the process of initially preparing and submitting claims to OVS, conflict with the authorizing statute, Executive Law article 22, or are otherwise irrational. The Court held that the regulations are fully consistent with the governing statutory language and purpose, within OVS's authority, and rational. OVS rationally determined that attorneys' fees for tasks such as preparing and submitting claim forms, or making telephone calls to ascertain the status of a claim, are not reasonable expenses.

### ATTORNEY DISCIPLINE

*Matter of Hallock* (37 NY3d 436)

Appellants were law firm partners who faced disciplinary proceedings in federal district court for the submission of a false affidavit signed and submitted by a firm employee. The federal district court imposed sanctions on the firm but found that the record did not support a finding

that either attorney knew that the affidavit was false. Before the Grievance Committee for the Southern District of New York, appellants consented to censure and admitted that they failed to supervise the employee, but denied any involvement in or knowledge of his wrongdoing. The Appellate Division suspended appellants, citing dishonest conduct. The Court reversed, holding that, because a finding of personal dishonesty goes beyond a failure to supervise or prevent dishonest conduct by an employee, such a finding with respect to appellants was not supported by the record before the federal court.

### CIVIL PROCEDURE

*Aybar v Aybar* (37 NY3d 274)

The Business Corporation Law requires foreign corporations seeking authorization to do business in New York to register with the New York Secretary of State and designate an in-state agent for service of process. The Court held that a foreign corporation's compliance with the relevant statutory provisions constitutes consent to accept service of process in New York; that compliance does not, however, constitute consent to general jurisdiction in New York courts. The Court clarified that *Bagdon v Philadelphia & Reading Coal & Iron Co.* (217 NY 432 [1916]) is not to the contrary.

*Estate of Kainer v UBS AG* (37 NY3d 460)

In this action involving a dispute over ownership of the proceeds of the sale of an Edgar Degas painting that was stolen from Margaret Kainer by the Nazi regime in the 1930s, the issue before the Court was whether Supreme Court abused its discretion in granting certain defendants' motion to dismiss the complaint on *forum non conveniens* grounds. Plaintiffs, Kainer's

estate and other heirs who alleged that Kainer's estate passed to them under French intestacy law, commenced this action against, among other defendants, a Swiss Foundation that was Kainer's purported heir, a Swiss bank that managed the assets of Kainer's family and a Swiss bank employee. The Swiss Foundation had registered the painting as stolen in lost and looted art databases, and it was ultimately sold by defendant Christie's Inc. at a public auction in New York after the Swiss Foundation renounced its rights as heir to the painting pursuant to a Restitution Settlement Agreement. Supreme Court presumed personal jurisdiction over the Swiss defendants and dismissed the complaint as against them on *forum non conveniens* grounds. The Court concluded that Supreme Court did not abuse its discretion by addressing *forum non conveniens* without first resolving those defendants' claims that the court lacked personal jurisdiction over them or by dismissing on *forum non conveniens* grounds.

*Plymouth Venture Partners, II, L.P. v GTR Source, LLC* (37 NY3d 591)

In two federal cases, plaintiffs were judgment debtors who asserted tort claims against judgment creditors and a New York City marshal. Plaintiffs' claims were based on allegations that defendants violated the CPLR article 52 service requirements in the process of executing valid judgments against plaintiffs. The Second Circuit certified questions to the Court, asking, in part, whether plaintiffs were permitted to bring common law tort claims without first seeking redress pursuant to the provisions established in article 52. The Court held that the judgment debtors were required to pursue relief by means of an action under CPLR article 52, which specifically

provides for proceedings in which courts may resolve claims arising out of the enforcement of valid money judgments. The Court rejected plaintiffs' assertion that a common law tort claim could be pursued based on allegations of noncompliance with the service requirements of article 52.

*Simmons v Trans Express Inc.* (37 NY3d 107)

Under New York City Civil Court Act § 1808, small claims judgments generally do not have collateral estoppel or issue preclusive effect, but such judgments may have the traditional *res judicata* or claim preclusive effect in a subsequent action involving a claim between the same adversaries arising out of the same transaction or series of transactions at issue in a prior small claims court action. Although section 1808 may be read to partially abrogate common law collateral estoppel principles as applied to small claims judgments, it is not clear from the statutory text or legislative history that the legislature also intended to limit common law *res judicata* as applied to such judgments.

## CIVIL RIGHTS

*Doe v Bloomberg L.P.* (36 NY3d 450)

Plaintiff, an employee of Bloomberg L.P., brought suit against defendants Bloomberg L.P., her supervisor Nicholas Ferris, and Michael Bloomberg, asserting several causes of action, including sex discrimination and hostile work environment under the New York City Human Rights Law (see Administrative Code of City of NY, title 8 [City HRL]). Plaintiff's claims against Bloomberg were based on the vicarious liability provision in the City HRL, pursuant to his status as an owner and officer of the company. The City HRL, while providing for vicarious

liability, does not define the term “employer” for the purposes of that provision. The Court held that where an employer is a business entity, the shareholders, agents, limited partners, and employees of that entity are not employers within the meaning of the City HRL. As a result, Bloomberg, an owner and officer of Bloomberg L.P., was not an employer within the meaning of the City HRL and could not be held vicariously liable for the supervisor’s offending conduct, and plaintiff’s claims against Bloomberg were dismissed.

*Sassi v Mobile Life Support Servs., Inc.* (37 NY3d 236)

Correction Law article 23-A and Executive Law § 296 (15) protect certain individuals convicted of criminal offenses from unlawful discrimination when applying for employment or licensing, preventing employers from denying an application for employment solely because the applicant was previously convicted of a criminal offense, subject to certain exceptions. The issue in this appeal was whether plaintiff—who acknowledged he was lawfully terminated when convicted of a criminal offense while working for defendant—adequately alleged that defendant violated the antidiscrimination statutes when it denied plaintiff’s application for employment following the completion of a brief jail sentence. After reviewing the statutory language, framework, and legislative history, the Court determined that nothing indicated a legislative intent to exempt a previous employer from the statutes’ reach. Moreover, the undefined term “application,” read in context and given its ordinary meaning, is reasonably interpreted to refer to a request for employment, an event the Court

recognized may take various forms in different circumstances and which may trigger coverage under the statutes. The Court held that the statutes’ application requirement is met when, viewed objectively and in light of the relevant circumstances, an employer would reasonably understand the communications from a prospective employee to be a request for employment. Under the liberal pleading standard for a pre-answer motion to dismiss, the Court concluded that the complaint adequately alleged facts supporting the inference that plaintiff applied for employment and was denied solely due to his conviction—and did not compel the conclusion, as defendant asserted, that plaintiff merely protested a lawful termination decision.

## CONSTITUTIONAL LAW

*Protect the Adirondacks! Inc. v New York State Dept. of Envtl. Conservation* (37 NY3d 73)

Article XIV, § 1 of the New York Constitution instructs that “[t]he lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.” The “forever wild” provision ensures the preservation of state-owned land within the Adirondack Park (and Catskills) in its wild state. The destruction or removal of trees within those state-owned lands represented a principal threat recognized by the 1894 Convention delegates, and violation of the prohibition against the destruction of timber is a violation of the forever wild clause, because that prohibition was a means to the ultimate objective of protecting the forest

as wilderness. The New York State Department of Environmental Conservation planned for the construction of approximately 27 miles of Class II community connector trails designed for snowmobile use in the Adirondack Forest Preserve. The plan would require the cutting and removal of thousands of trees of all sizes, grading and leveling, and the removal of rocks and other natural components from the Forest Preserve to create snowmobile paths that are nine to twelve feet in width. The Court held that the construction of these Class II trails violates the forever wild clause and therefore could not be accomplished other than by constitutional amendment. The Court rejected DEC's argument that the cutting of trees could be justified so long as it represented a small percentage of the overall Forest Preserve. The Court also rejected the argument that the project's impacts are justifiable because it would enhance access to the Forest Preserve and provide a variety of recreational opportunities. The Court explained that the Constitution provides for access and enjoyment of the Forest Preserve as a wild forest.

*People v Torres* (37 NY3d 256)

Administrative Code of the City of New York § 19–190, known as the “Right of Way Law,” imposes criminal liability based on a *mens rea* of ordinary negligence. Defendants, each convicted of violating that law, claimed that the statute is unconstitutional, arguing that it violates due process by employing an “ordinary care” *mens rea* and is preempted by the Penal Law and the Vehicle and Traffic Law. The Court held that the Right of Way Law did not violate due process by incorporating a culpable mental state of

ordinary negligence. Relatedly, because the duty to exercise due care is traditionally understood to be the definition of ordinary negligence, the Court held that the *mens rea* imposed by the Right of Way Law is not void for vagueness. The Court further held that the Right of Way Law does not run afoul of the preemption doctrine. With respect to the Penal Law, the Court explained that the list of four culpable mental states contained therein—intentionally, knowingly, recklessly, and criminal negligence—does not constitute a limitation on the culpable mental states that may be used to impose criminal liability by non-Penal Law statutes. With respect to the Vehicle and Traffic Law, the Court explained that this statutory scheme allows local governments to enact laws relating to the “[r]ight of way of vehicles and pedestrians” and does not permit the conduct prohibited by the Right of Way Law, and so it was not preempted by the Vehicle and Traffic Law.

*People v Viviani* (36 NY3d 564)

As part of the Protection of People with Special Needs Act, the legislature enacted Executive Law § 552, which created a special prosecutor, to be appointed by the Governor and empowered to investigate and prosecute crimes of abuse or neglect of vulnerable victims in facilities operated, licensed, or certified by the State. The special prosecutor, acting pursuant to this statutory authority, obtained indictments against the three defendants in these cases. The Court held that the provisions of Executive Law § 552 that created a special prosecutor having authority concurrent with that of the district attorneys were unconstitutional. By vesting concurrent discretionary power in an unelected appointee of the Governor, the statute

“deprive[d] the elected district attorneys of an essential function of their constitutional office—namely, the discretionary power to determine whom, whether and how to prosecute [in] a criminal matter.”

### CONSUMER PROTECTION

*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.* (37 NY3d 169)

The Court considered the scope of General Business Law § 349’s prohibition on deceptive business practices. Plaintiffs were a law firm specializing in landlord-tenant actions, a non-profit corporation that assists *pro se* litigants in housing court matters, and a tenant advocate and organizer; defendant was a publisher of legal reference materials. Defendant published a compendium of legal materials on landlord-tenant law known as the Tanbook. Plaintiffs alleged that the 2016 edition and several prior editions of the Tanbook contained serious omissions and inaccuracies in the section of the book reproducing the statutes and regulations applicable to rent-controlled and rent-stabilized apartments in New York City. Plaintiffs alleged that defendant nevertheless marketed the Tanbook as a complete and accurate source of those legal materials. That representation, plaintiffs argued, constituted a material misrepresentation under GBL § 349. The Court held that the statute’s text and purpose demonstrate a broad legislative aim of preventing deceptive business practices generally, even when those practices target only a sub-class of the consuming public. The Court also held that plaintiffs failed adequately to plead that defendant’s alleged deception would materially mislead a reasonable consumer, given the parties’ contracts and express

disclaimers addressing the precise deception plaintiffs alleged.

### CRIMINAL LAW

*People v Badji* (36 NY3d 393)

This appeal addressed whether the definition of credit card for purposes of Penal Law § 155.00 (7) includes the credit card account number or whether theft of the physical credit card is required in order to prosecute a defendant for fourth-degree grand larceny. Defendant used the victim’s corporate credit card account number to make purchases without permission. The definition of “credit card” contained in article 29-A of the General Business Law—which the legislature has directed is the proper definition applicable to grand larceny—unambiguously includes a credit card number. Given that the legislative intent, as illustrated in both the plain language of the statute and the legislative history, was to enact laws to prohibit and penalize identity theft, the Court concluded that the evidence was legally sufficient to support defendant’s conviction of grand larceny for stealing an intangible credit card account number.

*People v Buyund* (37 NY3d 532)

Defendant pleaded guilty to burglary in the first degree as a sexually motivated felony. Supreme Court sentenced him and certified him as a sex offender as that term is used in Correction Law § 168-a. Defendant did not object to his certification as a sex offender during the plea or at sentencing. On appeal, defendant argued for the first time that his certification as a sex offender was unlawful because his crime of conviction is not an enumerated registerable sex offense under Correction Law § 168-a (2) (a). The Court held that Sex Offender Registration Act

(SORA) certification is not a part of a defendant's sentence because the SORA statutory scheme is remedial as opposed to punitive in nature and SORA and its resultant obligations are effectuated by the court pursuant to Correction Law § 168-d rather than the sentencing provisions of the Criminal Procedure Law or Title E of the Penal Law. As such, the Court determined that defendant's statutory claim regarding the applicability of Correction Law § 168-a (2) (a) to the crime of burglary in the first degree as a sexually motivated felony did not fall within the illegal sentence exception to the preservation requirement and therefore did not review the issue.

*People v Duval* (36 NY3d 384)

In upholding defendant's conviction of criminal possession of a weapon in the third degree, the Court considered the validity of a search warrant, the summary denial of a suppression motion, and the reasonableness of how the warrant was executed. First, the Court held that the search warrant was facially valid; the motion court reviewed unincorporated warrant application materials to determine whether the warrant's description of the target premises was accurate, not to cure a facial deficiency, which is a permissible use of such documents. Next, the Court held that the motion court did not abuse its discretion in denying, without a hearing, defendant's suppression motion because the factual allegations and records defendant offered were insufficient to require a hearing. Finally, the Court held that the defendant's challenge to the execution of the search warrant was unpreserved for review.

*People v Epakchi* (37 NY3d 39)

In *People v Nuccio* (78 NY2d 102 [1991]), the Court held that the CPL did not prohibit the prosecution of a defendant by a facially sufficient information, after a prior simplified traffic information charging the same offense was dismissed for failure to provide the supporting deposition required by CPL 100.25 (2). In this case, the Appellate Term reversed defendant's judgment of conviction for violating Vehicle and Traffic Law § 1172 (a) and granted defendant's motion to dismiss the accusatory instrument "as a matter of discretion in the interest of justice," based on its "consistent[]" rule dismissing judgments of conviction where the People failed to establish the existence of special circumstances warranting reprosecution after an earlier simplified traffic information had been dismissed for failure to serve a requested supporting deposition. The Court held that this case was governed by *Nuccio* and the CPL and that the Appellate Term lacked authority to create a procedural rule requiring dismissal of a subsequently filed simplified traffic information outside of the grounds for dismissal authorized in the CPL.

*People v Gaworecki* (37 NY3d 225)

Defendant was alleged to have sold heroin to the decedent, who died of a heroin overdose shortly thereafter. Defendant was charged by indictment with, among other crimes, manslaughter in the second degree, which required the People to demonstrate that defendant recklessly caused the decedent's death. This Court held that the evidence presented to the grand jury was legally insufficient to sustain the manslaughter charge and dismissed that count of the indictment. Examining the *mens rea* definitions provided by the Penal

Law, and distinguishing its prior decision in *People v Li* (34 NY3d 357 [2019]), the Court concluded that the People failed to establish a prima facie case that defendant acted either with the recklessness required to sustain the manslaughter charge or the criminal negligence required for the lesser included offense of criminally negligent homicide. Although the evidence demonstrated that defendant knew that the heroin he sold to the decedent was strong and required caution, the People failed to present sufficient evidence that defendant was aware of and consciously disregarded a substantial and unjustifiable risk that the decedent would die from using the heroin that defendant sold him, or that defendant failed to perceive that risk. The Court further concluded that the People failed to establish that defendant's conduct was a gross deviation from the standard of care that a reasonable person would observe. In light of its conclusion that the evidence presented to the grand jury was legally insufficient with respect to *mens rea*, the Court did not address the separate question of whether that evidence was legally sufficient with respect to causation.

*People v Gordon* (36 NY3d 420)

The Court affirmed the suppression of evidence that police obtained from two vehicles located outside defendant's residence, where the search warrant obtained by police specified permission to search defendant and his premises but did not reference the vehicles, and where the search warrant materials failed to provide probable cause to search the vehicles. The People argued that *United States v Ross* (456 US 798 [1982]) should be extended to permit the search of the vehicles based on the warrant allowing a search of the

premises, an interpretation of *Ross* employed by some federal courts of appeals. The Court stated that its prior decisional law and the CPL provided that search warrants must describe with particularity the premises, vehicles, and persons they authorize police to search and establish probable cause for each. Accordingly, the Court held that a search warrant does not impliedly authorize the search of a vehicle located on premises when the warrant authorizes a search of the premises without referencing the vehicle. The Court further held that the record supported a finding that the search warrant application failed to establish probable cause to search the vehicles, as it provided no evidence connecting the vehicles to suspected criminality.

*People v Powell* (37 NY3d 476)

The issue in this appeal was whether the trial court erred by denying defendant's application to present expert testimony on the science of false confessions. Recognizing that awareness of the phenomenon of false confessions has evolved to the point of common knowledge, the Court stated that, in an appropriate case, expert testimony may educate the jury on the underlying science regarding the causal connection between relevant psychological risk factors and false confessions. However, an expert's testimony must do more than posit the general conclusion that false confessions do occur. Here, there was no abuse of discretion in the exclusion of the proposed expert testimony. Defendant failed to meet his burden to establish that the testimony of the highly credentialed expert was grounded in generally accepted psychological principles and the lack of relevance of the proposed testimony to the

circumstances of this case may have confused, rather than aided, the jury.

*People v Schneider* (37 NY3d 187)

In connection with the investigation of enterprise corruption and gambling offenses, a Kings County Supreme Court Justice had jurisdiction to issue eavesdropping warrants for defendant's cell phones, even though neither defendant nor the phones were physically present in New York, as the court found probable cause to believe that defendant was engaged in the designated gambling offenses in Kings County and the intercepted calls were evidence of that crime. The Court held that, for purposes of jurisdiction under CPL 700.05, the warrant is executed at the time when and at the location where the telephonic or electronic communications are intentionally recorded, overheard, or accessed by a law enforcement officer and the court's authority to issue the warrant is not dependent on the location of the target, the target's cell phone, or the other participants in the telephone call. As the necessary predicates of geographical jurisdiction and probable cause had been established, and the eavesdropping warrants were executed at a Kings County facility where the communications were overheard and accessed by law enforcement officers, the warrants were validly issued.

*People v Slade* (37 NY3d 127)

In each of these three cases, a translator participated in drafting the accusatory instrument by assisting in the process of documenting the information from first-party witnesses with limited-English proficiency. Defendants challenged the facial sufficiency of the accusatory

instruments filed against them, arguing that the participation of the translator created a hearsay defect requiring dismissal of the instrument. In one case, the accusatory instrument indicated, on its face, that a translator had participated in the creation of the accusatory instrument by reading the witness's one-page English-language statement to her in Spanish. The Court held that the witness's use of a translator did not constitute a hearsay defect that would render the accusatory instrument facially insufficient. The accusatory instruments in the other two cases contained no facial indication that a translator had participated in drafting the accusatory instrument. Applying the settled rule that the validity of an accusatory instrument is determined based on a facial reading of the instrument, the Court held that those accusatory instruments were facially sufficient.

*People v Wilkins* (37 NY3d 371)

Defendant was excluded from a sidebar conference with a prospective juror before he had been advised of his *Antommarchi* rights (see *People v Antommarchi*, 80 NY2d 247 [1992]). After defendant was so advised and waived his right to be present at further sidebars, defendant did not object to his exclusion from the sidebar and defense counsel continued to *voir dire* the prospective juror in defendant's presence. The Court concluded that defendant's exclusion from the sidebar required defendant's protest given his acquiescence in the post-waiver *voir dire* of the prospective juror. The *Antommarchi* violation was addressed by the court at a time when defendant could have requested that the error be cured. Furthermore, the core purpose of *Antommarchi* was fulfilled as defendant was able to witness his

counsel's questioning of the prospective juror before and after the sidebar, allowing him to assess the juror's demeanor and provide input as to the juror's suitability.

*People v Wortham* (37 NY3d 407)

Defendant was present in an apartment when police officers arrived to execute a search warrant there. After the officers found weapons and drugs in the apartment, defendant was charged with various counts relating to the possession of that contraband. In a pretrial suppression motion, defendant challenged the admissibility of his statement to police that he lived at the apartment, arguing that police had not provided him with *Miranda* warnings before they asked him where he lived. The People relied on the "pedigree exception" to *Miranda*, which allows the police to ask a suspect in custody questions regarding certain identifying information without first providing *Miranda* warnings, even though the questions constitute interrogation. Clarifying its prior decision in *People v Rodney* (85 NY2d 289 [1995]), the Court held that the pedigree exception will not apply when, under the circumstances, a reasonable person would conclude based on an objective analysis that the pedigree question was a disguised attempt at investigatory interrogation. In this case, the Court concluded that the pedigree exception applied and that defendant's statement was admissible. The Court nevertheless reversed, applying its previous holding in *People v Williams* (35 NY3d 24 [2020]), because the trial court abused its discretion in failing to hold a *Frye* hearing with respect to the admissibility of DNA evidence derived from the use of the Forensic Statistical Tool (see *Frye v United States*, 293 F 1013 [DC Cir 1923]). The Court held that the

appropriate remedy was remittal for a *Frye* hearing.

## DOMESTIC RELATIONS LAW

*Anderson v Anderson* (37 NY3d 444)

These appeals presented permutations of whether non-compliance with the signature acknowledgment requirement of Domestic Relations Law § 236 renders a nuptial agreement irrevocably unenforceable. In the first appeal, wife signed and acknowledged her signature one month after her marriage. However, husband did not acknowledge his signature until nearly seven years later, anticipating divorce. Answering the question previously left open in *Matisoff v Dobi* (90 NY2d 127 [1997]), the Court concluded that a signature on a nuptial agreement must be acknowledged contemporaneously within a reasonable time of the parties' signing. This rule does not preclude the execution of the nuptial agreement in counterparts and accounts for the reasonable delay between signing and acknowledgment. The Court held that husband's nearly seven-year delay in acknowledging his signature on the nuptial agreement was ineffective and rendered the nuptial agreement unenforceable. In contrast, in the second appeal, the acknowledgments of each party were made contemporaneously with the signing of the nuptial agreement, but the certificates of acknowledgment were defective. The parties' lawyers failed to include the fact that the signer was personally known to them at the time of signing. Therefore, the Court answered in the affirmative the question originally posited in *Galetta v Galetta* (21 NY3d 186, 196 [2013]): "where the signatures on the prenuptial agreement are authentic, there are no claims of fraud or duress, and the parties believed their signatures were being

duly acknowledged but, due to no fault of their own, the certificate of acknowledgment was defective or incomplete[.]” can a party offer extrinsic evidence in an attempt to cure the defect? Where the extrinsic evidence supports that the acknowledgment was properly made in the first instance, the evidence can cure a defect even if the official certificate of acknowledgment failed to include the proper language due to the notary’s or other official’s error.

## **INSURANCE**

*J.P. Morgan Sec. Inc. v Vigilant Ins. Co.* (37 NY3d 552)

In this dispute over enforcement of certain “wrongful acts” liability insurance policies issued to plaintiff J.P. Morgan, a securities broker-dealer, the Court held that a \$140 million settlement payment plaintiff made as “disgorgement” of third-party gains following an investigation by the Securities Exchange Commission into alleged securities law violations by J.P. Morgan’s customers was not excluded from coverage as a “penalty imposed by law.” Based on dictionary definitions and case law establishing that, in the insurance context, a sanction with both compensatory and punitive components is not fairly characterized as “punitive,” at the time the parties contracted, a reasonable insured would have understood the term “penalty” to refer only to non-compensatory, purely punitive monetary sanctions. Here, where the insureds offered un rebutted proof indicating that the relevant payment was calculated based on the measure of harm caused by the wrongdoing and was, in part, intended to compensate those who were injured, the insurers did not meet their burden to establish the payment was an unrecoverable “penalty.” The decision of

the United States Supreme Court in *Kokesh*—holding, as a matter of statutory interpretation, that the federal statute of limitations for actions to enforce a “penalty” encompassed certain “disgorgement” claims—did not compel a different conclusion (see *Kokesh v SEC*, 581 US \_\_\_, 137 S Ct 1635, 1639 [2017]). That federal case—decided nearly two decades after execution of the insurance contracts—did not involve the application of New York contract interpretation principles and did not purport to hold that a disgorgement payment is a “penalty” in all contexts, nor could it have informed the parties’ understanding of the meaning of the term “penalty” at the time of contracting.

## **MORTGAGES—FORECLOSURE**

*CIT Bank N.A. v Schiffman* (36 NY3d 550)

The United States Court of Appeals for the Second Circuit certified two questions relating to certain statutory notice and filing requirements of a lender prior to commencement of a residential foreclosure action, asking how a borrower can rebut a lender’s proof of compliance with the notice requirement found in RPAPL § 1304 and what information the lender must include in a RPAPL 1306 filing. As to the former, the Court held that, when the lender’s proof that it timely mailed the notices required by section 1304 is in the form of a standard office mailing procedure, a presumption of mailing and receipt arises that the borrower may rebut by offering proof of a material deviation from the ordinary practice that calls into doubt whether the notice was properly mailed. The crux of the inquiry is whether, viewed in context, the evidence of a defect casts doubt on the reliability of a key aspect of the process such that the inference that

notice was properly prepared and mailed is significantly undermined. With respect to the second query—whether a section 1306 filing is defective if it fails to include information about all borrowers on a multi-borrower loan—the Court determined it is not, given the use of the singular term “borrower” in the statutory text and the purpose of the filing requirement, which is to facilitate data collection by a government agency for statewide monitoring of the types of loans at risk of foreclosure.

*Freedom Mtge. Corp. v Engel* (37 NY3d 1)

In four appeals, each turning on the timeliness of a mortgage foreclosure claim, the Court was asked to clarify the rules surrounding a noteholder’s acceleration of a mortgage debt following the borrower’s default, which commences the statute of limitations on a foreclosure action, and the circumstances under which a noteholder’s voluntary withdrawal of a foreclosure action revokes the election to accelerate. Although these issues present matters of contract interpretation, due to the use of standardized instruments in the residential mortgage industry, the relevant contract terms were alike, permitting the Court to engage in a general discussion of the operation of the six-year statute of limitations for residential foreclosure claims. Reaffirming its 1932 decision in *Albertina Realty Co. v Rosbro Realty Corp.* (258 NY 472 [1932]) requiring an “unequivocal overt act” by the noteholder to accelerate the maturity date of the loan upon the borrower’s default, the Court held that the acts that purportedly accelerated the loans were not sufficiently unequivocal where, in one appeal, the default letter did not seek immediate payment of the entire debt and referred to

acceleration as a future event and, in another appeal, the complaints in the prior foreclosure actions failed to reference the modified loan agreements then in effect. In the remaining two appeals, the issue was whether an election to accelerate effectuated by the commencement of a prior foreclosure action was revoked upon the noteholder’s voluntary discontinuance of that action, and the Court emphasized the need for a clear rule that would ensure that parties understand their rights and responsibilities upon the conclusion of such an action. Accordingly, the Court held that a noteholder’s voluntary discontinuance of the action constitutes an affirmative act of revocation as a matter of law—reinstating the borrower’s right to repay arrears and resume satisfaction of the loan over time via installments—absent an express, contemporaneous statement to the contrary.

## NEGLIGENCE

*Greene v Esplanade Venture Partnership* (36 NY3d 513)

Two-year-old Greta Devere Greene was killed after debris fell from the façade of a building and struck her. Greta’s grandmother, plaintiff Susan Frierson, who was with Greta when the debris fell, commenced an action seeking damages for injuries she also suffered during that incident. Frierson later sought to amend the complaint to add an additional cause of action for negligent infliction of emotional distress, asserting that she was in the zone of danger at the time of the incident and that Greta qualified as her “immediate family” member. The “zone of danger” rule allows a plaintiff to recover for negligent infliction of emotional distress when the plaintiff is both within the zone of danger, i.e., threatened with

bodily harm, and also witnesses the death or serious physical injury of a person within the plaintiff's immediate family. The Court held that the motion to amend the complaint should have been granted. Declining to fix a permanent outer boundary for the definition of "immediate family," the Court held, based on evolving understandings of family over time and the law's recognition of the importance of the grandparent-grandchild relationship, that a grandchild falls within the definition of immediate family for purposes of the zone of danger rule.

### **PUBLIC HEALTH LAW**

*Ortiz v Ciox Health LLC* (37 NY3d 353)

In this implied private right of action case, the Court, answering a question certified by the Second Circuit, held that Public Health Law § 18 (2) (e)—which limits the reasonable charge for paper copies of medical records to \$0.75 per page—did not impliedly permit the plaintiff to sue for damages based on an overcharge. Reaffirming and then applying the factors articulated in *Sheehy v Big Flats Community Day* (73 NY2d 629 [1989]), the Court concluded that the creation of a private right of action for damages was inconsistent with the relevant legislative scheme because the Public Health Law contains other enforcement mechanisms for violations of section 18 (2) (e) and specifically provides for overcharge refunds in other similar provisions.

### **USURY**

*Adar Bays, LLC v GeneSYS ID, Inc.* (37 NY3d 320)

The Court answered in the affirmative two certified questions from the United States Court of Appeals for the Second Circuit: (1) whether a stock conversion

option that permits a lender, in its sole discretion, to convert any outstanding balance to shares of stock at a fixed discount should be treated as interest for the purpose of determining whether the transaction violates the New York criminal usury law (*see* Penal Law § 190.40) and (2) if the interest charged on a loan is determined to be criminally usurious, whether the contract is void *ab initio*. Answering the second certified question first, the Court held that the text, history, and purpose of New York's usury laws mandate that, if a borrower establishes the defense of usury in a civil action, the usurious loan transaction is deemed void and unenforceable, resulting in the uncollectibility of both principal and interest. Specifically, the Court held this includes loans to corporations when the interest charged on the loan exceeds the 25 percent interest cap (criminal usury) established in the Penal Law (§ 190.40). As to the first question certified, the Court held that the expected value of floating-price convertible options should be included in the determination of interest for purposes of a usury determination. Rejecting the argument that such options are so speculative as to not be able to be valued, the Court held that the value of the option is a question of fact and the burden to prove the value is on the borrower.

### **WORKERS' COMPENSATION**

*Matter of Estate of Youngjohn v Berry Plastics Corp.* (36 NY3d 595)

A workers' compensation claimant's estate is limited to recovering the portion of a posthumous schedule loss of use (SLU) award that would have been "due" to the claimant for the period prior to the claimant's death (*see* Workers'

Compensation Law § 33), plus “reasonable funeral expenses” (*id.* § 15 [4] [d]). The legislature did not alter the effect of Workers’ Compensation Law § 15 (4) (d) when it amended other provisions of the Workers’ Compensation Law to permit lump-sum payments of SLU awards. Thus, if a claimant dies from causes unrelated to the work injury, any yet unpaid amounts that would have become periodically due after the claimant’s death are payable to the estate only “in an amount not exceeding reasonable funeral expenses” (*id.* § 15 [4] [d]). This is consistent with the purpose of section 15 (4) (d) to provide some limited recovery to an estate where, previously, an estate had no entitlement to funeral expenses or the unpaid value of an SLU award upon the claimant’s death.

*Matter of Verneau v Consolidated Edison Co. of N.Y., Inc.* (37 NY3d 387)

The Special Fund for Reopened Cases was established by the Workers’ Compensation Law in 1933. Under this legislative scheme, liability for certain workers’ compensation claims involving long-closed cases that were reopened due to unforeseen circumstances would be transferred to the Special Fund. Faced with increasing costs, the legislature enacted Workers’ Compensation Law § 25-a (1-a), which closed the fund to any “application . . . for transfer of liability of a claim to the” Special Fund “on or after the first day of January, [2014],” while keeping the fund open only as long as necessary to fund previously transferred claims. The Court considered whether Workers’ Compensation Law § 25-a (1-a) forecloses transfer of liability for a *death* benefits claim submitted after the statutory deadline when liability for the worker’s original *disability* benefits claim had previously been transferred to the Special

Fund prior to the deadline. The Court determined that the statute’s reference to “a claim” means that a transfer of liability for a disability claim, even when causally related to a subsequent death benefits claim, could not be understood as a transfer of *any* related claim. Such a reading is supported by the text and the Court’s precedent drawing a stark distinction between disability and death benefits claims, which are “separate and distinct legal proceeding[s]” (*Matter of Zechmann v Canisteo Volunteer Fire Dept.*, 85 NY2d 747, 751 [1995]) and the legislature’s clear intent to close the Special Fund to new claims as expeditiously as possible.

# 2021 Events

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## State of Our Judiciary



Chief Judge Janet DiFiore delivered her fifth State of Our Judiciary (virtually) on March 2, 2021. The address, filmed at Court of Appeals Hall, focused on operational and fiscal challenges facing the Court System amid the COVID pandemic, as well as the technological advances and other positive innovations spurred by the public health crisis.

# Law Day 2021

Advancing the Rule of Law Now

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For more than three decades, the Court of Appeals has co-hosted the annual Law Day ceremony with the Attorney General of the State of New York. In 2020 and 2021, the Court continued the tradition in a virtual format. In 2021, Chief Judge DiFiore, Attorney General Letitia James and State Bar President Scott Karson presented remarks.

The 2021 Law Day theme was: “Advancing the Rule of Law Now.”

# Socially Distanced Oral Arguments

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To comply with public health guidelines, in 2021, the Court held oral arguments with the Judges of the Court and arguing counsel at least six feet apart in the Richardson Courtroom at Court of Appeals Hall.

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# Judges of the Court of Appeals

## Chief Judge

Hon. Janet DiFiore

## Associate Judges

Hon. Jenny Rivera

Hon. Leslie E. Stein (retired June 4, 2021)

Hon. Eugene M. Fahey (retired December 31, 2021)

Hon. Michael J. Garcia

Hon. Rowan D. Wilson

Hon. Paul G. Feinman (retired March 23, 2021)

Hon. Madeline Singas (confirmed June 8, 2021)

Hon. Anthony Cannataro (confirmed June 8, 2021)

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## Nonjudicial Staff

|                            |                                                   |
|----------------------------|---------------------------------------------------|
| Amyot, Leah Soule          | Senior Principal Law Clerk to Judge Cannataro     |
| Asiello, John P.           | Clerk of the Court                                |
| Barile, Robert             | HVAC Assistant Building Superintendent            |
| Bass, Kate                 | Law Clerk to Judge Wilson                         |
| Bielawski, Julia Smead     | Assistant Consultation Clerk                      |
| Brizzie, Gary J.           | Assistant Building Superintendent I               |
| Byer, Ann                  | Secretary to the Court of Appeals                 |
| Byrne, Cynthia D.          | Criminal Leave Applications Clerk                 |
| Calvay-Benedetto, Patricia | Secretary to Judge Wilson                         |
| Cassara, Christian         | Senior Court Attorney, Central Staff              |
| Chaudhry, Zainab           | Principal Court Attorney                          |
| Chest, Wesley              | Senior Associate Computer Applications Programmer |
| Clark, Judith A.           | Principal Stenographer                            |
| Costa, Gary Q.             | Senior Court Building Guard                       |
| Coughlin, Monica           | Special Projects Coordinator                      |
| Couser, Lisa A.            | Senior Clerical Assistant                         |
| Cross, Robert J.           | Senior Court Building Guard                       |
| Culligan, David *          | Senior Clerical Assistant                         |
| Damrosch, Peter*           | Law Clerk to Judge Wilson                         |
| Davis, Heather             | Deputy Clerk of the Court                         |
| Delgosha, Anita            | Senior Court Attorney, Central Staff              |
| Ding, Leo*                 | Assistant Law Clerk to Judge Garcia               |
| Donnelly, William E.       | Senior Assistant Building Superintendent          |
| Drumm, Lori*               | Principal Stenographer                            |
| Drury, Lisa                | Special Projects Counsel                          |
| Eddy, Margery Corbin       | Chief Court Attorney                              |
| Engel, Hope B.             | Consultation Clerk                                |
| Faleck, Michael            | Senior Principal Law Clerk to Judge Cannataro     |
| Fischer, David             | Law Clerk to Judge Garcia                         |
| Flowers, Taylor            | Principal Stenographer                            |
| Gadson, Ronald             | Deputy Chief Security Attendant                   |
| Galvao, Antonio            | Counsel to Chief Judge DiFiore                    |
| Garcia, Heather A.         | Senior Security Attendant                         |
| Garnes, Lisa               | Assistant Court Analyst                           |
| Gersztoff, Stephen         | Senior Law Librarian                              |
| Gibbons, Laurie            | Senior Principal Law Clerk to Judge Singas        |
| Goldenberg, Alice          | Senior Law Clerk to Judge Cannataro               |
| Golebiowski, Jacob         | Senior Local Area Network Administrator           |
| Grasso, Emily              | Assistant Law Clerk to Judge Singas               |

\* As of January 1, 2022, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

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## Nonjudicial Staff

|                        |                                                   |
|------------------------|---------------------------------------------------|
| Groschadl, Laura A.    | Senior Principal Law Clerk to Judge Fahey         |
| Haas, Tammy L.         | Principal Assistant Building Superintendent       |
| Hanft, Genevieve       | Principal Law Clerk to Judge Garcia               |
| Hartnagle, Anthony     | Principal Custodial Aide                          |
| Henney, Scott*         | Law Clerk to Judge Rivera                         |
| Hickey, Meaghan        | Court Analyst                                     |
| Holman, Cynthia M.     | Principal Stenographer                            |
| Hosang-Brown, Yanique  | Management Analyst                                |
| Hulse, Emma*           | Law Clerk to Judge Wilson                         |
| Korek, Cydney          | Assistant Law Clerk to Judge Cannataro            |
| Ignazio, Andrea*       | Principal Stenographer                            |
| Jurkowski, Stephanie * | Senior Court Attorney, Central Staff              |
| Kaiser, Warren         | Senior PC Analyst                                 |
| Kenny, Krysten         | Principal Law Clerk to Chief Judge DiFiore        |
| Knepka, Megan          | Senior Court Attorney, Central Staff              |
| Lance, Garrett         | Assistant Law Clerk to Judge Garcia               |
| Lane, Brian C.         | Senior Court Building Guard                       |
| LaPorte, Azahar        | Secretary to Judge Rivera                         |
| Lawrence, Bryan D.     | Chief Management Analyst                          |
| LeBow, Matthew         | Deputy Chief Security Attendant                   |
| LeCours, Lisa A.       | Executive Assistant to Chief Judge DiFiore        |
| Levin, Justin          | Senior Principal Law Clerk to Judge Singas        |
| Lyon, Gordon W.*       | Senior Principal Law Clerk to Judge Fahey         |
| MacVean, Rachael M.    | Chief Motion Clerk                                |
| Maniscalco, Stephen*   | Senior Law Clerk to Judge Feinman                 |
| Manring, Gregory       | Senior Law Clerk to Judge Singas                  |
| Martino, Regina        | Principal Stenographer                            |
| Mason, Marissa K.      | Principal Law Librarian                           |
| Mayo, Michael J.       | Building Manager                                  |
| McCormick, Lauren      | Senior Court Attorney, Central Staff              |
| McGlothlin, William *  | Assistant Law Clerk to Judge Stein                |
| Mendias, Ryan          | Law Clerk to Judge Rivera                         |
| Molho, Graham*         | Senior Court Attorney, Central Staff              |
| Moore, Travis R.       | Senior Security Attendant                         |
| Muller, Joseph J.      | Senior Security Attendant                         |
| Mulvey, Kristin        | Law Clerk to Judge Rivera                         |
| Mulyca, Jonathan A.    | Court Analyst                                     |
| Nania, Anthony         | Law Clerk to Chief Judge DiFiore                  |
| O'Friel, Jennifer A.   | Senior Principal Law Clerk to Chief Judge DiFiore |

\* As of January 1, 2022, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

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## Nonjudicial Staff

|                          |                                                   |
|--------------------------|---------------------------------------------------|
| Ohanian, Edward J.       | Assistant Deputy Clerk                            |
| O'Rourke, Joseph C.      | Principal Court Attorney                          |
| Pasquarelli, Angela M.   | Senior Services Aide                              |
| Pastrick, Michael*       | Senior Principal Law Clerk to Judge Fahey         |
| Pavlini, Sarah           | Senior Court Attorney, Central Staff              |
| Radley, Kelly            | Principal Custodial Aide                          |
| Rappoport, Gaspard*      | Law Clerk to Judge Feinman                        |
| Rawal, Shiv              | Law Clerk to Judge Wilson                         |
| Riegel, Joshua*          | Senior Law Clerk to Judge Rivera                  |
| Rodriguez, Steven        | Senior Court Building Guard                       |
| Roe, Jennifer L.         | Senior Court Building Guard                       |
| Ross-Carroll, Amanda     | Director Court of Appeals Management & Operations |
| Ruesher-Enkeboll, Kelsey | Law Clerk to Judge Wilson                         |
| Savarese, Laura *        | Law Clerk to Judge Wilson                         |
| Schwartzman, Nina        | Senior Court Attorney, Central Staff              |
| Sherwin, Stephen P.      | Deputy Chief Court Attorney                       |
| Shevlin, Denise C.       | Senior Security Attendant                         |
| Skinner, Erin S.*        | Senior Court Attorney, Central Staff              |
| Spencer, Gary H.         | Public Information Officer                        |
| Struver, Zack            | Law Clerk to Judge Rivera                         |
| Sullivan, Kayley*        | Law Clerk to Judge Garcia                         |
| Taylor, Michelle         | Principal Stenographer                            |
| Terranova, Charles       | Senior Court Attorney, Central Staff              |
| Torres, Samuel           | Senior Security Attendant                         |
| VanDeloo, James F.       | Deputy Building Superintendent                    |
| Waithe, Nelvon H.        | Senior Court Building Guard                       |
| Warenchak, Andrew R.     | Principal Custodial Aide                          |
| Welch, Mary K. *         | Secretary to Judge Fahey                          |
| Wheelock, Kathryn*       | Law Clerk to Chief Judge DiFiore                  |
| Whiting, Jessica         | Principal Stenographer                            |
| Wilson, Mark             | Senior Court Building Guard                       |
| Wilson, Michele          | Principal Custodial Aide                          |
| Winkley, Nicholas D.*    | Senior Court Attorney, Central Staff              |
| Wood, Margaret N.        | Assistant Deputy Clerk                            |
| Yalamas, George C.       | Chief Security Attendant                          |
| Yoon, Sera               | Senior Court Attorney, Central Staff              |
| Zucker, Aaron            | Senior Law Clerk to Judge Garcia                  |

\* As of January 1, 2022, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

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## Personnel Changes

### APPOINTMENTS

|                          |                                               |
|--------------------------|-----------------------------------------------|
| Amyot, Leah Soule        | Senior Principal Law Clerk to Judge Cannataro |
| Bass, Kate               | Law Clerk to Judge Wilson                     |
| Faleck, Michael          | Senior Principal Law Clerk to Judge Cannataro |
| Fischer, David           | Law Clerk to Judge Garcia                     |
| Flowers, Taylor          | Principal Stenographer                        |
| Gibbons, Laurie          | Senior Principal Law Clerk to Judge Singas    |
| Goldenberg, Alice        | Senior Law Clerk to Judge Cannataro           |
| Grasso, Emily            | Assistant Law Clerk to Judge Singas           |
| Hanft, Genevieve         | Principal Law Clerk to Judge Garcia           |
| Hickey, Meaghan          | Court Analyst                                 |
| Kenny, Krysten           | Principal Law Clerk to Chief Judge DiFiore    |
| Korek, Cydney            | Assistant Law Clerk to Judge Cannataro        |
| Lance, Garrett           | Assistant Law Clerk to Judge Garcia           |
| Levin, Justin            | Senior Principal Law Clerk to Judge Singas    |
| Manring, Gregory         | Senior Law Clerk to Judge Singas              |
| Mulvey, Kristin          | Law Clerk to Judge Rivera                     |
| O'Rourke, Joseph         | Principal Court Attorney                      |
| Rawal, Shiv              | Law Clerk to Judge Wilson                     |
| Ruesher-Enkeboll, Kelsey | Law Clerk to Judge Wilson                     |
| Struver, Zack            | Law Clerk to Judge Rivera                     |
| Taylor, Michelle         | Principal Stenographer                        |
| Whiting, Jessica         | Principal Stenographer                        |

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## Personnel Changes

### PROMOTIONS

|                    |                                      |
|--------------------|--------------------------------------|
| Cassara, Christian | Senior Court Attorney, Central Staff |
| Hartnagle, Anthony | Principal Custodial Aide             |
| Knepka, Megan      | Senior Court Attorney, Central Staff |
| McCormick, Lauren  | Senior Court Attorney, Central Staff |
| Pavlini, Sarah     | Senior Court Attorney, Central Staff |
| Terranova, Charles | Senior Court Attorney, Central Staff |
| Yoon, Sera         | Senior Court Attorney, Central Staff |
| Zucker, Aaron      | Senior Law Clerk to Judge Garcia     |

### COMPLETION OF CLERKSHIPS, RESIGNATIONS, RETIREMENTS AND TRANSFERS

|                      |                                           |
|----------------------|-------------------------------------------|
| Culligan, David      | Senior Clerical Assistant                 |
| Damrosch, Peter      | Law Clerk to Judge Wilson                 |
| Ding, Leo            | Assistant Law Clerk to Judge Garcia       |
| Drumm, Lori          | Principal Stenographer                    |
| Henney, Scott        | Law Clerk to Judge Rivera                 |
| Hulse, Emma          | Law Clerk to Judge Wilson                 |
| Ignazio, Andrea R.   | Principal Stenographer                    |
| Jurkowski, Stephanie | Senior Court Attorney, Central Staff      |
| Lyon, Gordon W.      | Senior Principal Law Clerk to Judge Fahey |
| Maniscalco, Stephen  | Senior Law Clerk to Judge Feinman         |
| Manring, Gregory     | Senior Law Clerk to Judge Garcia          |
| McGlothlin, William  | Assistant Law Clerk to Judge Stein        |
| Molho, Graham        | Senior Court Attorney, Central Staff      |
| Pastrick, Michael    | Senior Principal Law Clerk to Judge Fahey |
| Rapport, Gaspard     | Law Clerk to Judge Feinman                |
| Riegel, Josh         | Senior Law Clerk to Judge Rivera          |
| Savarese, Laura      | Law Clerk to Judge Wilson                 |
| Skinner, Erin        | Senior Court Attorney, Central Staff      |
| Sullivan, Kayley     | Law Clerk to Judge Garcia                 |
| Welch, Mary          | Secretary to Judge Fahey                  |
| Wheelock, Katherine  | Law Clerk to Chief Judge DiFiore          |
| Winkley, Nicholas    | Senior Court Attorney, Central Staff      |

## Appeals Decided by Jurisdictional Predicate (2021)

| Basis of Jurisdiction:                           |             |          |              |           |        |       |
|--------------------------------------------------|-------------|----------|--------------|-----------|--------|-------|
| All Appeals                                      | Disposition |          |              |           |        |       |
|                                                  | Affirmance  | Reversal | Modification | Dismissal | Other* | Total |
| Appellate Division Dissents                      | 4           | 2        | 0            | 1         | 0      | 7     |
| Permission of Court of Appeals/Judge thereof     | 25          | 20       | 1            | 0         | 0      | 46    |
| Permission of Appellate Division/Justice thereof | 7           | 10       | 2            | 0         | 0      | 19    |
| Constitutional Question                          | 1           | 2        | 0            | 0         | 0      | 3     |
| Stipulation for Judgment Absolute                | 0           | 0        | 0            | 0         | 0      | 0     |
| CPLR 5601(d)                                     | 0           | 1        | 0            | 0         | 0      | 1     |
| Other                                            | 0           | 0        | 0            | 0         | 5      | 5     |
| Totals                                           | 37          | 35       | 3            | 1         | 5      | 81    |

\* Final determinations of Rule 500.27 certified questions.

## Appeals Decided by Jurisdictional Predicate (2021)

| Basis of Jurisdiction:                   |             |          |              |           |        |       |
|------------------------------------------|-------------|----------|--------------|-----------|--------|-------|
| Civil Appeals                            | Disposition |          |              |           |        |       |
|                                          | Affirmance  | Reversal | Modification | Dismissal | Other* | Total |
| Appellate Division                       |             |          |              |           |        |       |
| Dissents                                 | 4           | 2        | 0            | 1         | 0      | 7     |
| Permission of Court of Appeals           | 7           | 9        | 0            | 0         | 0      | 16    |
| Permission of Appellate Division         | 0           | 4        | 1            | 0         | 0      | 5     |
| Constitutional Question                  | 1           | 2        | 0            | 0         | 0      | 3     |
| Stipulation for Judgment Absolute        | 0           | 0        | 0            | 0         | 0      | 0     |
| CPLR 5601(d)                             | 0           | 1        | 0            | 0         | 0      | 1     |
| Other                                    | 0           | 0        | 0            | 0         | 5      | 5     |
| Totals                                   | 12          | 18       | 1            | 1         | 5      | 37    |
| Basis of Jurisdiction:                   |             |          |              |           |        |       |
| Criminal Appeals                         | Disposition |          |              |           |        |       |
|                                          | Affirmance  | Reversal | Modification | Dismissal | Other* | Total |
| Permission of Court of Appeals Judge     | 18          | 11       | 1            | 0         | 0      | 30    |
| Permission of Appellate Division Justice | 7           | 6        | 1            | 0         | 0      | 14    |
| Totals                                   | 25          | 17       | 2            | 0         | 0      | 44    |

\* Final determinations of Rule 500.27 certified questions.

## Appeals Analysis (2017-2021)

|                            |                    |                    |                    |                   |                   |
|----------------------------|--------------------|--------------------|--------------------|-------------------|-------------------|
| <b>All Appeals —</b>       |                    |                    |                    |                   |                   |
| <b>Civil and Criminal</b>  | <b>2017</b>        | <b>2018</b>        | <b>2019</b>        | <b>2020</b>       | <b>2021</b>       |
| <b>Civil</b>               | 56%<br>(80 of 142) | 63%<br>(86 of 136) | 56%<br>(60 of 108) | 56%<br>(54 of 96) | 46%<br>(37 of 81) |
| <b>Criminal</b>            | 44%<br>(62 of 142) | 37%<br>(50 of 136) | 44%<br>(48 of 108) | 44%<br>(42 of 96) | 54%<br>(44 of 81) |
| <b>Civil Appeals —</b>     |                    |                    |                    |                   |                   |
| <b>Type of Disposition</b> |                    |                    |                    |                   |                   |
|                            | <b>2017</b>        | <b>2018</b>        | <b>2019</b>        | <b>2020</b>       | <b>2021</b>       |
| <b>Affirmed</b>            | 47%                | 58%                | 48%                | 41%               | 32%               |
| <b>Reversed</b>            | 33%                | 30%                | 38%                | 45%               | 49%               |
| <b>Modified</b>            | 10%                | 7%                 | 5%                 | 8%                | 3%                |
| <b>Dismissed</b>           | 1%                 | 0%                 | 3%                 | 2%                | 3%                |
| <b>Other*</b>              | 9%                 | 5%                 | 5%                 | 4%                | 13%               |
| <b>Criminal Appeals —</b>  |                    |                    |                    |                   |                   |
| <b>Type of Disposition</b> |                    |                    |                    |                   |                   |
|                            | <b>2017</b>        | <b>2018</b>        | <b>2019</b>        | <b>2020</b>       | <b>2021</b>       |
| <b>Affirmed</b>            | 63%                | 62%                | 69%                | 36%               | 57%               |
| <b>Reversed</b>            | 34%                | 38%                | 27%                | 62%               | 39%               |
| <b>Modified</b>            | 1.5%               | 0%                 | 4%                 | 0%                | 4%                |
| <b>Dismissed</b>           | 1.5%               | 0%                 | 0%                 | 2%                | 0%                |
| <b>Other*</b>              | 0%                 | 0%                 | 0%                 | 0%                | 0%                |

\* Includes final determinations of Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

## Civil Appeals Decided by Jurisdictional Predicate (2017-2021)

|                                      | 2017              | 2018              | 2019              | 2020              | 2021              |
|--------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Appellate Division<br>Dissents       | 21%<br>(17 of 80) | 17%<br>(15 of 86) | 30%<br>(18 of 60) | 22%<br>(12 of 54) | 19%<br>(7 of 37)  |
| Permission of Court of<br>Appeals    | 30%<br>(24 of 80) | 36%<br>(31 of 86) | 42%<br>(25 of 60) | 44%<br>(24 of 54) | 43%<br>(16 of 37) |
| Permission of Appellate<br>Division  | 33%<br>(26 of 80) | 37%<br>(32 of 86) | 18%<br>(11 of 60) | 20%<br>(11 of 54) | 13%<br>(5 of 37)  |
| Constitutional Question              | 5%<br>(4 of 80)   | 2.5%<br>(2 of 86) | 3%<br>(2 of 60)   | 6%<br>(3 of 54)   | 8%<br>(3 of 37)   |
| Stipulation for Judgment<br>Absolute | 1%<br>(1 of 80)   | 0%<br>(0 of 86)   | 0%<br>(0 of 60)   | 0%<br>(0 of 54)   | 0%<br>(0 of 37)   |
| CPLR 5601(d)                         | 1%<br>(1 of 80)   | 2.5%<br>(2 of 86) | 2%<br>(1 of 60)   | 0%<br>(0 of 54)   | 3%<br>(1 of 37)   |
| Supreme Court Remand                 | 0%<br>(0 of 80)   | 0%<br>(0 of 86)   | 0%<br>(0 of 60)   | 0%<br>(0 of 54)   | 0%<br>(0 of 37)   |
| Judiciary Law § 44                   | 1%<br>(1 of 80)   | 2.5%<br>(2 of 86) | 0%<br>(0 of 60)   | 4%<br>(2 of 54)   | 0%<br>(0 of 37)   |
| Certified Question<br>(Rule 500.27)  | 8%<br>(6 of 80)   | 2.5%<br>(2 of 86) | 5%<br>(3 of 60)   | 4%<br>(2 of 54)   | 14%<br>(5 of 37)  |
| Other                                | 0%<br>(0 of 80)   | 0%<br>(0 of 86)   | 0%<br>(0 of 60)   | 0%<br>(0 of 54)   | 0%<br>(0 of 37)   |

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## Criminal Appeals Decided by Jurisdictional Predicate (2017-2021)

|                                             | 2017              | 2018              | 2019              | 2020              | 2021              |
|---------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Permission of<br>Court of Appeals Judge     | 70%<br>(43 of 62) | 60%<br>(30 of 50) | 67%<br>(32 of 48) | 81%<br>(34 of 42) | 68%<br>(30 of 44) |
| Permission of Appellate<br>Division Justice | 30%<br>(19 of 62) | 40%<br>(20 of 50) | 33%<br>(16 of 48) | 19%<br>(8 of 42)  | 32%<br>(14 of 44) |

## Motions (2017-2021)

|                                                     | 2017 | 2018 | 2019 | 2020 | 2021 |
|-----------------------------------------------------|------|------|------|------|------|
| Motions Submitted for Calendar Year                 | 1237 | 1238 | 1182 | 954  | 1030 |
| Motions Decided for Calendar Year*                  | 1196 | 1180 | 1096 | 1070 | 988  |
| Motions for Leave to Appeal                         | 920  | 926  | 843  | 870  | 801  |
| Granted                                             | 38   | 31   | 18   | 32   | 33   |
| Denied                                              | 718  | 674  | 640  | 663  | 587  |
| Dismissed                                           | 164  | 221  | 184  | 171  | 177  |
| Withdrawn                                           | 6    | 4    | 1    | 4    | 4    |
| Motions to Dismiss Appeals                          | 6    | 3    | 6    | 3    | 6    |
| Granted                                             | 2    | 1    | 2    | 2    | 2    |
| Denied                                              | 4    | 2    | 4    | 1    | 4    |
| Dismissed                                           | 0    | 0    | 0    | 0    | 0    |
| Withdrawn                                           | 0    | 0    | 0    | 0    | 0    |
| <i>Sua Sponte</i> and Court's Own Motion Dismissals | 94   | 101  | 118  | 97   | 85   |
| Total Dismissals of Appeals                         | 96   | 102  | 120  | 99   | 87   |
| Motions for Reargument of Appeal                    | 24   | 27   | 24   | 23   | 19   |
| Granted                                             | 0    | 0    | 0    | 0    | 0    |
| Motions for Reargument of Motion                    | 57   | 59   | 68   | 55   | 29   |
| Granted                                             | 0    | 1    | 0    | 0    | 0    |
| Motions for Assignment of Counsel                   | 36   | 29   | 27   | 23   | 22   |
| Granted                                             | 36   | 29   | 27   | 23   | 22   |
| Legal Aid                                           | 4    | 6    | 7    | 4    | 2    |
| Denied                                              | 0    | 0    | 0    | 0    | 0    |
| Dismissed                                           | 0    | 0    | 0    | 0    | 0    |
| Motions for Poor Person Status                      | 238  | 244  | 194  | 205  | 168  |
| Granted                                             | 6    | 5    | 6    | 4    | 3    |
| Denied                                              | 0    | 1    | 0    | 0    | 0    |
| Dismissed                                           | 232  | 238  | 188  | 201  | 165  |

\* Because more than one relief request may be decided under a single motion, the total number of decisions by relief requests is greater than the total number of motions decided.

## Motions (2017-2021)

|                                        | 2017 | 2018 | 2019 | 2020 | 2021 |
|----------------------------------------|------|------|------|------|------|
| Motions for Amicus Curiae Relief       | 112  | 92   | 79   | 71   | 94   |
| Granted                                | 106  | 89   | 75   | 70   | 91   |
| Motions to Waive Rule Compliance       | 0    | 0    | 0    | 0    | 0    |
| Granted                                | 0    | 0    | 0    | 0    | 0    |
| Motions to Vacate Dismissal/Preclusion | 6    | 5    | 1    | 6    | 2    |
| Granted                                | 3    | 4    | 0    | 3    | 0    |
| Motions for Leave to Intervene         | 1    | 0    | 0    | 0    | 0    |
| Granted                                | 0    | 0    | 0    | 0    | 0    |
| Motions to Stay/Vacate Stay            | 32   | 39   | 29   | 20   | 13   |
| Granted                                | 0    | 1    | 1    | 2    | 0    |
| Denied                                 | 1    | 2    | 2    | 2    | 0    |
| Dismissed                              | 31   | 36   | 26   | 16   | 13   |
| Withdrawn                              | 0    | 0    | 0    | 0    | 0    |
| Motions for CPL 460.30 Extension       | 16   | 17   | 18   | 12   | 18   |
| Granted                                | 16   | 17   | 18   | 12   | 17   |
| Motions to Strike                      | 3    | 0    | 4    | 2    | 2    |
| Granted                                | 1    | 0    | 3    | 2    | 0    |
| Motions to Amend Remittitur            | 0    | 0    | 0    | 1    | 3    |
| Granted                                | 0    | 0    | 0    | 0    | 2    |
| Motions for Miscellaneous Relief       | 21   | 23   | 34   | 27   | 17   |
| Granted                                | 3    | 2    | 1    | 2    | 2    |
| Denied                                 | 7    | 2    | 24   | 12   | 4    |
| Dismissed                              | 11   | 19   | 9    | 13   | 11   |
| Withdrawn                              | 0    | 0    | 0    | 0    | 0    |

## Criminal Leave Applications (2017-2021)

|                                                              | 2017 | 2018 | 2019 | 2020 | 2021 |
|--------------------------------------------------------------|------|------|------|------|------|
| <b>Total Applications Assigned</b>                           | 2275 | 2406 | 2408 | 1729 | 1659 |
|                                                              |      |      |      |      |      |
| <b>Total Applications Decided*</b>                           | 2244 | 2319 | 2493 | 1824 | 1658 |
| Granted                                                      | 25   | 36   | 34   | 29   | 27   |
| Denied                                                       | 2042 | 2128 | 2265 | 1668 | 1526 |
| Dismissed                                                    | 172  | 153  | 188  | 117  | 98   |
| Withdrawn                                                    | 5    | 2    | 6    | 10   | 7    |
|                                                              |      |      |      |      |      |
| <b>Total People's Applications</b>                           | 65   | 49   | 75   | 38   | 52   |
| Granted                                                      | 7    | 4    | 15   | 4    | 3    |
| Denied                                                       | 52   | 42   | 52   | 29   | 43   |
| Dismissed                                                    | 5    | 2    | 3    | 1    | 1    |
| Withdrawn                                                    | 1    | 1    | 5    | 4    | 5    |
|                                                              |      |      |      |      |      |
| <b>Average Number of Applications Assigned to Each Judge</b> | 374  | 344  | 344  | 247  | 237  |
|                                                              |      |      |      |      |      |
| <b>Average Number of Grants for Each Judge</b>               | 4    | 5    | 5    | 4    | 4    |

\* Includes some applications assigned in previous year.

## *Sua Sponte* Dismissal (SSD) Rule 500.10 Review (2017-2021)

|                                                                                                                                                                  | 2017 | 2018 | 2019 | 2020 | 2021 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------|------|------|------|
| Total number of inquiry letters sent                                                                                                                             | 80   | 80   | 80   | 68   | 63   |
| Withdrawn on stipulation                                                                                                                                         | 0    | 4    | 0    | 2    | 1    |
| Dismissed by Court                                                                                                                                               | 49   | 50   | 56   | 48   | 49   |
| Transferred to Appellate Division <i>Sua Sponte</i>                                                                                                              | 4    | 3    | 6    | 2    | 3    |
| Appeals allowed to proceed in normal course (a final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission) | 8    | 6    | 2    | 4    | 5    |
| Jurisdiction retained – appeals decided                                                                                                                          | 2    | 0    | 0    | 0    | 0    |
| Inquiries pending at year's end                                                                                                                                  | 17   | 17   | 16   | 12   | 5    |

## Office for Professional Matters (2017-2021)

|                             | 2017  | 2018  | 2019  | 2020  | 2021  |
|-----------------------------|-------|-------|-------|-------|-------|
| Attorneys Admitted*         | 8,203 | 8,750 | 8,537 | 8,276 | 7,829 |
| Registered In-House Counsel | 162   | 133   | 141   | 71    | 164   |
| Certificates of Admission   | 98    | 133   | 131   | 152   | 102   |
| Clerkship Certificates      | 2     | 3     | 4     | 2     | 4     |
| Petitions for Waiver**      | 270   | 259   | 322   | 309   | 448   |
| Written Inquiries           | 75    | 78    | 98    | 128   | 94    |
| Disciplinary Orders***      | 3,551 | 471   | 763   | 1,889 | 410   |
| Name Change Orders          | 981   | 917   | 965   | 483   | 668   |

\* The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 468).

\*\* Includes correspondence to law schools reviewing their J.D. and LL.M. programs under Rules 520.3 and 520.6.

\*\*\* The 2017, 2019, 2020, and 2021 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (see Judiciary Law § 468-a).

